

NOTICE OF PROPOSED RULEMAKING
AMENDMENTS TO TITLE 23, CA CODE OF REGULATIONS REGARDING
CHANGES RELATED TO AB 5 AND TECHNICAL UPDATES

NATURE OF PROCEEDING

NOTICE IS HEREBY GIVEN that the Central Valley Flood Protection Board (CVFPB) proposes to amend the following Sections in Title 23, California Code of Regulations:

Section 1 (Authority)

Section 3 (Intent)

Section 4 (Definitions)

Section 5 (Delegations)

Section 6 (Need for a Permit)

Section 7 (Endorsement by Local Maintaining Agency)

Section 8 (Applications)

Section 13 (Hearings)

Section 15 (Bases for Denial of Application)

Section 112, Table 8.1 (Regulated Streams and Non-Permissible Work Periods)

Section 109 (Right of Review of Delegated Authority)

Section 120(a)(5) (Levees)

Section 193, Appendix A (Applications for Encroachment Permits)

In addition, CVFPB proposes to add the following new sections to Title 23, California Code of Regulations:

Section 5.1 (Ex Parte Communications)

Section 13.1 (Conduct and Order of Evidentiary Hearing Proceedings)

Section 13.2 (Consent Calendar)

Section 138 (Identification of Limits of Flood Control Works)

PUBLIC PROCEEDINGS

A public hearing regarding this proposal is not currently scheduled. However, any interested person or duly authorized representative may request, no later than 15 days prior to the close of the written comment period that a public hearing be scheduled.

Following the public hearing, if one is requested, or following the written comment period, if no public hearing is requested, the CVFPB may thereafter adopt the proposals substantially as described herein and in the Initial Statement of Reasons or may modify the proposals if the modifications are substantially related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony if a public hearing is held, or who have requested notification of any changes to the proposal.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to

Dan S. Fua, P.E., Supervising Engineer
Central Valley Flood Protection Board
3310 El Camino Ave., Room LL40
Sacramento, CA 95821

Comments may also be submitted by facsimile (FAX) at (916) 574-0682 or by e-mail to lpndleb@water.ca.gov. Comments must be submitted prior to 5:00 p.m. on January 9, 2009.

AUTHORITY AND REFERENCE

Assembly Bill 5 (AB 5) took effect on January 1, 2008, and was codified in relevant part at Water Code sections 8521, 8550, 8551, 8578, and 8610.5. AB 5 reconstituted and renamed the Reclamation Board to the "Central Valley Flood Protection Board," imposed new ex parte rules, and mandated the Board to adopt regulations related to evidentiary hearings. In addition, the CVFPB's authorities relevant to the subject matter of the proposed regulations are generally stated in Water Code sections 8534, 8608, and 8710-8723.

Pursuant to the authority vested by Water Code section 8571, CVFPB is considering changes to Division 1 of Title 23 of the California Code of Regulations. These proposed regulations will implement, interpret, or make specific Water Code sections 8521, 8534, 8550, 8551, 8578, 8608, 8610.5, and 8710-8723.

INFORMATIVE DIGEST:

Assembly Bill 5 (AB 5) took effect on January 1, 2008, and was codified in relevant part at Water Code sections 8521, 8550, 8551, 8578, and 8610.5. Among many changes, AB 5 reconstituted and renamed the Reclamation Board to the "Central Valley Flood Protection Board." The new legislation also imposes new ex parte rules and requires the Board to hold

evidentiary hearings on all matters requiring the issuance of a permit. Water Code section 8610.5(a)(1) states that "The board shall adopt regulations relating to evidentiary hearings pursuant to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code."

Pursuant to the authority vested by Water Code section 8571 and 8610.5, the purpose of the proposed rulemaking is to provide the regulations required by Water Code section 8610.5 regarding evidentiary hearings in accordance with Legislative intent. In addition, pursuant to authority vested by Water Code section 8571, the regulations will implement, interpret, or make specific the new legislation. The proposed rulemaking also makes several substantive and non-substantive changes in order to make the current regulations consistent with the new legislation.

In addition to making changes related to AB 5, the purpose of the proposed rulemaking is to update the regulations to fix typographical errors and omissions, as well as to bring the regulations into conformance with current Board procedures. CVFPB's authorities relevant to the subject matter of the proposed regulations are generally stated in Water Code sections 8534, 8608, and 8710-8723. Pursuant to the authority vested by Water Code section 8571, CVFPB proposes changes to Division 1 of Title 23 of the California Code of Regulations. These proposed regulations will implement, interpret, or make specific Water Code sections 8534, 8608, and 8710-8723.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulatory action would not impose a mandate on local agencies or school districts; nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. No nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

No savings or increased costs to State agencies are anticipated.

EFFECT ON FEDERAL FUNDING TO THE STATE

No effect on federal funding to the State is anticipated.

EFFECT ON HOUSING COSTS

No effect on housing costs is anticipated.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE/EFFECT ON SMALL BUSINESSES

CVFPB has made an initial determination that the adoption of these regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulations primarily clarify new laws imposed on the CVFPB and fix typographic errors. Two of the

proposed regulations (Sections 120(a)(5) and 138) are related to easements and give the Board the ability to create greater flood protection, and arguably protect businesses in those areas.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

CVFPB has determined that the regulatory proposal will not have any impact on the creation or elimination of jobs, the creation of new businesses, or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulations.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), CVFPB must determine that no reasonable alternative considered by CVFPB, or that has otherwise been identified and brought to the attention of CVFPB, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

CVFPB has prepared and has available for public review an Initial Statement of Reasons for the proposed regulations, all the critical information upon which the regulation is based, and the text of the proposed regulations. A copy of the Initial Statement of Reasons and a copy of the proposed text are available upon request from Lorraine Pendlebury at the e-mail address listed above, or by calling (916) 574-0609. These documents are posted at CVFPB's website at www.cvfpb.ca.gov.

FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons may be obtained, when it becomes available, from Lorraine Pendlebury at the e-mail address and telephone number indicated above. The Final Statement of Reasons will also be available at the CVFPB's website at www.cvfpb.ca.gov.

CENTRAL VALLEY FLOOD
PROTECTION BOARD

Jay Punia, Executive Officer

Dated: _____, 2008

**STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION BOARD
3310 EL CAMINO AVENUE, RM. LL40 (JOC)
SACRAMENTO, CA 95821**

**DIVISION 1, CHAPTER 1, ARTICLE 1, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING AUTHORITY**

DRAFT REGULATIONS

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 1, Section 1, to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

Title 23. Waters

Division 1. Reclamation Board-Central Valley Flood Protection Board

Chapter 1. Organization, Powers and Standards

Article 1. Authority, Purpose, Scope, and Intent

§ 1. Authority.

These regulations are promulgated by the Reclamation Board pursuant to Water Code sections 8571, ~~and 8608,~~ and 8610.5.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8608, ~~and 8710,~~ and 8610.5, Water Code.

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**DIVISION 1, CHAPTER 1, ARTICLE 1, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING INTENT**

DRAFT REGULATIONS

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 1, Section 3, to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

Title 23. Waters

Division 1. Reclamation Board Central Valley Flood Protection Board

Chapter 1. Organization, Powers and Standards

Article 1. Authority, Purpose, Scope, and Intent

§ 3. Intent.

The State has a primary interest in:

- (1) Adequately protecting lands subject to overflow;
- (2) Confining the waters of rivers, tributaries, bypasses, overflow channels, and basins within their respective boundaries;
- (3) Preserving the welfare of residents and landowners;
- (4) Maintaining and protecting and the banks of the Sacramento and San Joaquin Rivers, their tributaries, bypasses, overflow channels, and basins and;
- (5) Good and sufficient levees and embankments or other works of flood control and reclamation, to adequately protect lives and property from floods

The regulations are also intended to comply with the board's obligations to the U.S. Army Corps of Engineers pursuant to numerous assurance agreements, Corps Operation and Maintenance Manuals, and 33 C.F.R. section 208.10.

NOTE: Authority cited : Section 8571, Water Code. Reference: Sections 8710, 8532 and 8533, Water Code.

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**DIVISION 1, CHAPTER 1, ARTICLE 2, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING DEFINITIONS AND DELEGATIONS**

DRAFT REGULATIONS

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 2, Section 4, to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

Title 23. Waters

Division 1. Reclamation Board Central Valley Flood Protection Board

Chapter 1. Organization, Powers and Standards

Article 2. Definitions and Delegations

§ 4. Definitions

- (a) Adopted Plan of Flood Control. "Adopted Plan of Flood Control" means a flood control or reclamation strategy for a specific area that has been adopted by the board or the legislature and includes the following:
 - (1) In the case of project flood channels without levees, it means the natural stream channel and overbank area at design flood levels; ~~(see Article 5, Designated Floodways);~~
 - (2) In the case of project channel with levees, it means the area between and including the project levees, and includes:
 - (A) Additional area outside of the project levees where encroachments could affect the integrity, functioning or maintenance of the works (generally ten (10) feet landward of the levee toe);
 - (B) Any flowage areas that are part of the federal or state flood control project; and
 - (C) Areas where there are flowage easements; and
 - (3) In the case of designated floodways, it means the area between the encroachments lines. For purposes of this section, boundary lines and encroachment lines are interchangeable terms.
 - (4) Where levees are involved, the "Adopted Plan of Flood Control" extends at least ten (10) feet landward from the levee toe except where an operation and maintenance manual furnished pursuant to 33 C.F.R. 208.10 or the real property rights acquired by the board specifically provide otherwise.

- (b) Berm. "Berm" means the strip of ground between the waterward levee toe and the top of the bank of a low water channel.
- (c) Board. "Board" means ~~The Reclamation Board~~ Central Valley Flood Protection Board of the Resources Agency of the State of California as provided in Water Code section 8521.

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8361, 8370, 8521, 8581, 8608, 8630 and 8710, Water Code.

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**DIVISION 1, CHAPTER 1, ARTICLE 2, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING DELEGATIONS**

DRAFT REGULATIONS

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 2, Section 5, to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

Title 23. Waters

Division 1. ~~Reclamation Board~~ Central Valley Flood Protection Board

Chapter 1. Organization, Powers and Standards

Article 2. Definitions and Delegations

§ 5. Delegations.

(a) For the purposes of this division, all duties of the board, ~~including the review and approval of all encroachment permit applications,~~ are hereby delegated to the ~~General Manager~~ Executive Officer, with the exception of the following:

(1) ~~Applications for which written protests have been filed~~ Matters that require the issuance of a permit;

(2) ~~Applications which require a variance from the board's standards;~~

(3) ~~(2) Controversial applications~~ matters, based on substantial public concern;

(4) ~~(3) Applications~~ Matters involving significant policy considerations;

(5)(4) ~~Applications~~ Matters requiring the preparation of an environmental impact report by the board.

(6)(5) ~~Applications~~ Matters involving residential developments, as defined in Section 113.

(7)(6) ~~Applications~~ Matters for involving surface mining except extensions of time for existing operations.

(8) ~~Applications for bicycle trails on levees.~~

(b) The General Manager ~~Executive Officer~~ shall have authority to approve notices of exemption, initial studies and negative declarations, notices of preparation, requests for shortened review, ~~draft environmental impact reports, and notices of determination prepared pursuant to CEQA.~~ The General Manager may conduct public hearings on any matter identified in this subsection. The Executive Officer may distribute draft environmental impact reports. ~~The board may, by resolution, delegate other duties and responsibilities to the General Manager, the Director of the department, or others.~~

(c) The board may, by resolution or written agreement, delegate other duties and responsibilities to the Executive Officer, the Director of the department, or others, with the authority to redelegate. ~~The General Manager, by written order, may redelegate these authorities to the Chief Engineer, Board Counsel, or the Department Program Manager for Flood Control Activities under Reclamation Board authority.~~

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8581, 8610.5, and 8710, Water Code.

**STATE OF CALIFORNIA
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**DIVISION 1, CHAPTER 1, ARTICLE 2.5, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING EX PARTE COMMUNICATIONS**

AB5 DRAFT REGULATIONS

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Add Article 2.5, Section 5.1, to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

Title 23. Waters

Division 1. ~~Reclamation Board~~ Central Valley Flood Protection Board

Chapter 1. Organization, Powers and Standards

Article 2.5. Ex Parte Communications

§ 5.1. Ex Parte Communications.

(a) Ex parte communications concerning matters, other than purely procedural matters, under the board's jurisdiction that are subject to a vote are prohibited. However, if such a prohibited communication occurs, any board member who receives the ex parte communication shall disclose the content of the communication on the record.

(b) "Matters under the board's jurisdiction" means the following:

1) Matters for which an application for a permit has been submitted to the board;

2) Enforcement actions; and

3) Any other quasi-judicial matter for which board action is required and after the matter has been placed on the board's agenda and notice of the meeting has been provided pursuant to Section 11125 of the Government Code.

It shall not mean quasi-legislative actions, including topics of general concern which are not related to a specific application, such as the adoption of an overall policy regarding flood protection or general policy concerns which may be raised at task force, subcommittee, or other meetings. For enforcement actions pursuant to Article 4 of these regulations, the prohibition shall attach after the Executive Officer or Chief Engineer either issues an order to stop work or

mails a notice of violation, whichever is sooner. After the board votes on an application and any opportunity for reconsideration pursuant to Article 4.1 of these regulations has expired, the matter is no longer a "matter under the board's jurisdiction."

(c) "Procedural matters" include, but are not limited to, communications regarding the schedule, location, or format for hearings, filing dates, identity of parties, and other such non-substantive information.

(d) When the ex parte rules of this section attach, any board member may only take a field trip to the site of a proposed project or a pending enforcement action if ten (10) days' advance public notice is given stating the time, location, and intended scope of the field trip.

(e) Any required disclosure under this section shall occur prior to or at the same time that the board considers the matter that is the subject of the ex parte communication.

(f) Compliance with the disclosure requirement regarding the receipt of a written ex parte communication shall be accomplished by having the recipient board member or the person who engaged in the communication with the board member send a copy of the written communication and any response to the communication to the Executive Officer for inclusion into the record of the matter that is the subject of the ex parte communication. "Written ex parte communication" shall mean a communication in any written form, including but not limited to electronic mail, handwritten note, or type-written document.

(g) Compliance with the disclosure requirement regarding the receipt of an oral ex parte communication shall be accomplished by having the recipient board member or the person who engaged in the communication with the board member submit a memorandum to the Executive Officer for inclusion into the record of the matter that is the subject of the ex parte communication.

(h) The memorandum required by paragraph (g) shall include the substance of the communication, any response by the recipient board member, and the identity of each person from whom the recipient board member received the communication.

Note: Authority cited: Section 8571, Water Code. Reference: Section 8578, Water Code.

**STATE OF CALIFORNIA
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**DIVISION 1, CHAPTER 1, ARTICLE 3, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING DEFINITIONS AND DELEGATIONS**

DRAFT REGULATIONS

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 3, Section 6, to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

Title 23. Waters

Division 1. ~~Reclamation Board~~ Central Valley Flood Protection Board

Chapter 1. Organization, Powers and Standards

Article 3. Application Procedures

§ 6. Need for a Permit

- (a) Every proposal or plan of work, including the placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, encroachment or works of any kind, and including the planting, excavation, or removal of vegetation, and any repair or maintenance that involves cutting into the levee, wholly or in part within any area for which there is an adopted plan of flood control, must be approved by the board prior to the commencement of work.
- (b) Permits may be required by the board for existing structures that predate permitting or where it is necessary to establish the conditions normally imposed by permitting. The circumstances include those where responsibility for the encroachment has not been clearly established or ownership and use have been revised.
- (c) Every proposal or plan of work described in subdivision (a), but located outside an area over which there is an adopted plan of flood control, must be submitted to the board for approval prior to the commencement of work if it is foreseeable that the plan of work could be injurious to or interfere with the successful execution, functioning, or operation of any facilities of an adopted plan of flood control or of a plan under study. If in the judgement judgment of the ~~General Manager~~ Executive Officer, the plan of work is determined to be injurious to or

interfere with an adopted plan of flood control or of a plan under study, the plan of work would be subject to requirements of this division.

- (d) Permits are not required for maintenance activities as defined in article 2, section 4 of this title.
- (e) The ~~General Manager~~ Executive Officer may waive the requirements for a permit for minor alterations within an adopted plan of flood control that would not be injurious to the adopted plan of flood control.

NOTE: Authority cited: Section 8571, Water Code. Reference: Sections 8608 and 8710, Water Code.

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SACRAMENTO, CA 95821**

**DIVISION 1, CHAPTER 1, ARTICLE 3, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING DEFINITIONS AND DELEGATIONS**

DRAFT REGULATIONS

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 3, Section 7, to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

Title 23. Waters

Division 1. Reclamation Board Central Valley Flood Protection Board

Chapter 1. Organization, Powers and Standards

Article 3. Application Procedures

| § 7. Endorsement by ~~Local~~ Maintaining Agency

- (a) Prior to submitting an encroachment permit application to the board, the application must be endorsed by the agency responsible for maintenance of levees within the area of the proposed work, such as a reclamation district, drainage district, flood control district, levee district, state, county, or city. Endorsement or denial of the application by the maintaining agency does not preclude the board from either approving or denying the application. If endorsement by the maintaining agency is declined or is unreasonably delayed, the application may be submitted to the board for consideration, along with a satisfactory explanation for lack of an endorsement.
- (b) For the purposes of this section "endorsement" means conceptual plan approval, which may include recommended permit conditions of the local maintaining agency.
- (c) Applicants shall be advised by the board that permission for an encroachment may also be required from the local maintaining agency.
- (d) ~~This section does not apply where the department is the maintaining agency.~~

NOTE: Authority cited: Section 8571, Water Code. Reference: Sections 8370, 8707, 8710 and 12642, Water Code.

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SACRAMENTO, CA 95821**

**DIVISION 1, CHAPTER 1, ARTICLE 3, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING DEFINITIONS AND DELEGATIONS**

DRAFT REGULATIONS

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 3, Section 8, to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

Title 23. Waters

Division 1. Reclamation Board Central Valley Flood Protection Board

Chapter 1. Organization, Powers and Standards

Article 3. Application Procedures

§ 8. Applications

(a) All applications for approval must be on forms provided by the board. The board provides a standard application for most projects. When available, a special joint permit application may be used by an applicant. Applications to the board must be typewritten or in legible handwriting in ink and signed by or on behalf of the applicant. Applicants must furnish copies of other material as may be needed by the board and its staff to adequately determine the exact nature of the proposed work and its effect upon any project facilities or adopted plan of flood control. Applications and all associated material must be filed in quadruplicate (4 copies) with the office of the board. A copy of the standard application form is found in Appendix A. Applicants should contact the board if their project is covered under a joint permit application form previously approved by the board.

(b) Information furnished to the board must include:

- (1) A description of the proposed work, together with a statement of the dates the planned construction will be initiated and completed.
- (2) A completed copy of the Environmental Assessment Questionnaire that accompanies the application form from the board (See Appendix A) and a copy of any draft and final environmental review document prepared for the project, such as an initial study, environmental assessment, negative declaration, notice of exemption, or environmental impact report. For any reasonably foreseeable significant environmental impacts, mitigation for such impacts shall be proposed.

- (3) Complete plan and specification showing the proposed work, including a location map showing the site of the work with relation to topographic features; a plan view of the area; and adequate cross sections through the area of the proposed work. The plans must be drawn to scale and refer to National Geodetic Vertical Datum (NGVD), or other known datum. The plans must also indicate any project features such as levees and/or channels, roads, or other structures, and must show river mile or levee mile references. The dimensions of any proposed or existing fills, excavations, and construction must be given.
- (4) Additional information, such as geotechnical exploration, soil testing, hydraulic or sediment transport studies, biological surveys, environmental surveys and other analyses may be required at any time prior to board action on the application.
- (5) The names and addresses of all landowners of the property on which the project is located and of all landowners adjacent to the property on which the project is located.
- (6) The Board may waive minor variations in an application.

NOTE: Authority cited: Section 8571, Water Code. Reference: Section 2090, Fish and Game Code; Section 21080.3, 21104.2 and 21160, Public Resources Code; and Sections 8611, 8710 and 8730.3, Water Code.

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**DIVISION 1, CHAPTER 1, ARTICLE 2, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING EVIDENTIARY HEARINGS**

AB5 DRAFT REGULATIONS

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 3, Section 13, to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters
Division 1. ~~Reclamation Board~~ Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 3. Application Procedures**

§ 13. Evidentiary Hearings.

(a) An evidentiary hearing shall be held for any matter that requires the issuance of a permit.
~~Hearings shall be held on an application in the following circumstances:~~

~~(1) Upon written request of the applicant;~~

~~(2) When approval requires a variance to the board's standards;~~

~~(3) When any person files a written protest conforming to the requirements of section 12 and requests a hearing;~~

~~(4) When the authority to approve the activity has not been delegated to the General Manager;~~

~~(5) Upon the board's own motion.~~

(b) The requirement for an evidentiary hearing may be satisfied for permit applications by placing the matter on the board's consent calendar in accordance with Section 13.2.

(c) Evidentiary hearings shall be conducted pursuant to the procedures in Section 13.1.

~~(b)~~(d) The applicant and other parties may request in writing that the board provide a copy of any document, not exempt from disclosure under the Public Records Act, beginning at Government Code section 6251, that is relevant to any proceeding. The board may charge a reasonable fee for each copy.

~~(e)~~(e) The board may hold a hearing or a partial hearing at any place within the state on its own initiative or on the request of the applicant. All hearings must be open to the public. The board President may designate a hearing officer. The board may require the applicant to pay all ~~or part of the overtime pay expenses of incurred~~ for any hearing not located in the County of Sacramento, if the hearing is moved from Sacramento at the request of the applicant. ~~These expenses may include, but are not limited to the following:~~

~~(1) Traveling expenses of the board, officers, and employees of the board;~~

~~(2) Expenses of stenographic reporting and transcribing evidence; and~~

~~(3) A proportionate allowance, according to their usual rate of compensation, for the time of members, officers, and employees of the board required for the hearing.~~

(f) If the President designates a hearing officer, the hearing officer shall draft proposed findings and a proposed decision. The proposed findings and proposed decision, along with any evidence admitted at the hearing, shall be transmitted to the board as soon as reasonably possible following the hearing. The board shall consider the hearing officer's proposed findings and proposed decision at the next available board meeting following the hearing officer's decision. The decision on the matter shall not become final until the board approves or rejects the hearing officer's proposed decision. The board's review of the hearing officer's decision does not re-open the hearing and no new evidence shall be submitted unless allowed by the President.

~~(d)~~(g) Written notice of the hearing shall be mailed ~~provided~~ to the applicant and ~~each other party~~ at least ten (10) days prior to the date of the hearing. The notice shall include the following:

(1) The name and number assigned to the application, if any;

(2) A description of the application and its proposed location;

(3) The date, time, and place at which the hearing will be held;

(4) A statement that the hearing will be governed by this Article, and that a copy of the governing procedures will be provided to the applicant upon request;

(5) A statement that Chapter 5 of the Administrative Procedure Act (commencing with section 11500) shall not apply to the proceeding; and

(6) A statement that if the applicant or any of the applicant's witnesses do not proficiently speak or understand English, the applicant may request language assistance by contacting the board and making such request within a reasonable amount of time prior to the hearing to allow appropriate arrangements to be made. The President or appointed hearing officer may direct the applicant to pay for the cost of the interpreter based upon an equitable consideration of all the circumstances of each case, such as the ability of the party in need of the interpreter to pay.

(e)(h) Applicants shall be notified of the staff recommendations on the application at least seven (7) days prior to the hearing, unless this period is waived by the applicant. Adjacent landowners shall also be notified of staff recommendations at least seven (7) days prior to the hearing if they have responded in writing to the notice sent pursuant to section 9(b) of this article. Protestants shall be notified of the staff recommendations at least seven (7) days prior to the hearing.

(i) Notice to an applicant's representative as designated on the completed permit application form shall constitute notice to the applicant.

~~(f)(j) The board President or appointed hearing officer may implement additional administrative procedures for the conduct of hearings and related proceedings. This authority may be redelegated to the General Manager.~~

(k) For purposes of this section, minor alterations pursuant to section 6(e) and minor amendments to a previously issued permit shall not require an evidentiary hearing. An amendment shall be deemed to be minor if it is consistent with the decision of the Board and does not impose any new su

<General Materials (GM) — References, Annotations, or Tables>

Note: Authority cited: Section 8571, Water Code and Section 11400.20, Government Code.
Reference: Sections 6253, ~~and 11125~~, and 11425.10, Government Code; and Sections 8710, 8730.2, 8731, 8732, 8732.5, 8734 and 8735, Water Code.

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SACRAMENTO, CA 95821

DIVISION 1, CHAPTER 1, ARTICLE 2, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING CONDUCT AND ORDER OF EVIDENTIARY HEARING
PROCEEDINGS

AB5 DRAFT REGULATIONS

Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Add Article 3, Section 13.1, to read as follows:

CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS

Title 23. Waters

Division 1. ~~Reclamation Board~~ Central Valley Flood Protection Board

Chapter 1. Organization, Powers and Standards

Article 3. Application Procedures

§ 13.1. Conduct and Order of Evidentiary Hearing Proceedings.

(a) It is the purpose of this section to incorporate and implement the informal hearing procedures and Administrative Adjudication Bill of Rights in Chapter 4.5 of the Administrative Procedure Act (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, which require notice and an opportunity to be heard, including the opportunity to present and rebut evidence. Chapter 5 of the Administrative Procedure Act (commencing with section 11500) does not apply to evidentiary hearings before the board or an appointed hearing officer.

(b) Evidentiary hearings shall be conducted in a manner deemed most suitable to ensure fundamental fairness to all parties concerned, and with a view toward securing all relevant information and material necessary to render a decision without unnecessary delay.

(c) Evidentiary hearings shall be held in open session. Unless the President or appointed hearing officer directs otherwise, the hearing shall proceed in the following order:

(1) The Executive Officer or his/her designee shall make a presentation to the board describing the application and summarizing the staff recommendation, including, for example, the proposed findings and written correspondence received prior to the hearing.

(2) The public testimony portion of the public hearing shall proceed in the following order:

(i) Persons or their representatives desiring to state their views on the application shall have the opportunity to do so as follows:

(A) The applicant;

(B) Other persons supporting the application;

(C) Persons opposing the application;

(D) Other persons.

(ii) The President or appointed hearing officer may allow rebuttal testimony by the applicant.

(iii) The Executive Officer or his/her designee may respond to and comment, as appropriate, on the testimony presented by any previous speaker.

(3) The President or appointed hearing officer may close the public testimony portion of the hearing when a reasonable opportunity to present all questions and points of view has been allowed.

(4) Board members or the appointed hearing officer may ask questions at any time following any person's presentation.

(5) At the conclusion of the public testimony portion of the public hearing, the Executive Officer or his/her designee may propose to change the staff recommendation or the board may propose to add, delete, or modify the conditions contained in the staff recommendation. The applicant and the Executive Officer or his/her designee shall have an opportunity to comment on any proposed change.

(6) The board shall vote on a permit application in accordance with Water Code section 8560. In the case of an appointed hearing officer, the hearing officer shall act on the application.

(d) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The President or appointed hearing officer may take official notice of such facts as may be judicially noticed by the courts of this state. Unduly repetitious or irrelevant evidence shall be excluded upon order by the President or appointed hearing officer.

(e) The President or appointed hearing officer may establish reasonable time limits for presentations. The time limits shall be made known to all speakers prior to any hearing. The President or appointed hearing officer may require individuals to consolidate their comments to avoid repetition.

(f) In order for audio, visual, or audio-visual materials to be considered by the board, they must be submitted to staff in the course of review of the application or shown in full at the public hearing. The presentation of these materials shall occur within the time limit allocated to speakers.

(g) The applicant must submit all materials presented at the hearing to the Executive Officer or his/her designee for inclusion in the record of the proceeding. Any speaker who exhibits models or other large-sized materials as part of his or her presentation may satisfy this requirement by:
(1) submitting accurate reproductions or photographs of the models or other large materials and
(2) agreeing in writing to make such materials available to the board if necessary for any administrative or judicial proceeding. If written materials are submitted, the applicant shall bring a sufficient number of copies of all such materials to the hearing to allow members of the public to review the materials prior to the board's or hearing officer's decision.

(h) All decisions of the board relating to permit applications shall be accompanied by written conclusions setting forth the factual and legal basis of the decision based upon the record. The written conclusions shall include all elements identified in Water Code section 8610.5(c)(1)-(4).

(1) For purposes of this section, a resolution adopted by the board at the hearing shall be deemed to satisfy the requirement for written conclusions, including any modifications made to the resolution at the hearing.

(2) In addition, unless otherwise specified at the time of the vote, an action taken consistent with the staff recommendation shall be deemed to have been taken on the basis of, and to have adopted, the reasons, findings and conclusions set forth in the staff report, including any modifications made to the staff report at the hearing.

(i) If the board action is substantially different than that recommended in the staff report and/or the resolution, the board may direct staff to return at a subsequent board meeting with a revised resolution and/or proposed revised written conclusions that reflect the action of the board. Revised written conclusions may be placed on the consent calendar and do not re-open the hearing. Public comment is restricted to whether the revised written conclusions reflect the action of the board. Any proposed written conclusions shall only be effective if concurred in by at least four members of the board. Board members who were not present for the original vote may only vote on the revised written conclusions if they have familiarized themselves with the record of proceedings. If the board does not accept the revised resolution or proposed revised written conclusions submitted by the Executive Officer, the board can either make such changes as it determines are appropriate and adopt the findings at that meeting or direct the Executive Officer to prepare further proposed written conclusions and submit them to the board at the next meeting. The board's decision is deemed final at the time of the initial vote on the application, not the time that the revised written conclusions are adopted.

(j) If the applicant requests language assistance prior to the hearing, the board shall provide language assistance in accordance with Article 8 (commencing with Section 11435.05) of the Administrative Procedure Act. The President or appointed hearing officer may direct the applicant to pay for the cost of the interpreter. The determination whether to direct payment shall be based upon an equitable consideration of all the circumstances in each case, such as the ability of the applicant in need of the interpreter to pay. If the request for an interpreter is not made within a reasonable amount of time prior to the hearing to allow appropriate arrangements to be made, the hearing may be continued to a subsequent meeting and the applicant shall be deemed to have consented to such continuance.

(k) The board may vote to continue all or part of the hearing to a subsequent meeting. Notice of the subsequent hearing shall be distributed in accordance with Section 13 of these regulations. A continuance of part of a hearing does not reopen the entire hearing.

Note: Authority cited: Section 8571, Water Code and Section 11400.20, Government Code.
Reference: Section 11425.10, Government Code; and Section 8610.5, Water Code.

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**DIVISION 1, CHAPTER 1, ARTICLE 2, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING CONSENT CALENDAR**

AB5 DRAFT REGULATIONS

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Add Article 3, Section 13.2, to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

Title 23. Waters

Division 1. ~~Reclamation Board~~ Central Valley Flood Protection Board

Chapter 1. Organization, Powers and Standards

Article 3. Application Procedures

§ 13.2. Consent Calendar.

(a) Unless otherwise provided in this Article, the procedures set forth in Article 3 of these regulations pertaining to permit applications, including staff reports, staff recommendations, resolutions, and voting, shall apply to the consent calendar procedure.

(b) Any matter for which there are no speakers in opposition, including permit matters, may be placed on the board's consent calendar in accordance with Section 13.2, unless one of the following occurs to remove the item from the consent calendar:

- (1) Upon request by the applicant, any member of the public, or any board member;
- (2) When any interested party files a written protest conforming to the requirements of section 12 and requests a hearing;
- (3) When approval requires a variance to the board's standards;
- (4) Upon the board's own motion.

(c) All items included in the consent calendar shall be considered by the board in one action. Public testimony shall be deemed waived. If the item is not removed from the consent calendar, any recommended conditions contained in the staff report and resolution, if one is prepared, shall be deemed approved by the board.

(d) Consent calendar items shall only be voted on if the board accepts the staff recommendation as stated in the staff report with no substantial changes. Otherwise, the item must either be removed from the consent calendar for discussion and action at the same meeting or continued to a subsequent board meeting.

(e) If an item is removed from the consent calendar pursuant to (b) above, then the public shall have the right to present testimony and evidence in accordance with Section 13.1 of these regulations.

Note: Authority cited: Section 8571, Water Code and Section 11400.20, Government Code.
Reference: Section 11425.10, Government Code; and Section 8610.5, Water Code.

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SACRAMENTO, CA 95821**

**DIVISION 1, CHAPTER 1, ARTICLE 2, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING BASES FOR DENIAL OF APPLICATION**

AB5 DRAFT REGULATIONS

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 3, Section 15, to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters
Division 1. ~~Reclamation Board~~ Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 3. Application Procedures**

§ 15. Bases for Denial of Permit Applications.

The board may deny a permit for any of the following reasons:

(a) If the proposed work could:

- (1) Jeopardize directly or indirectly the physical integrity of levees or other works;
- (2) Obstruct, divert, redirect, or raise the surface level of design floods or flows, or the lesser flows for which protection is provided;
- (3) Cause significant adverse changes in water velocity or flow regimen;
- (4) Impair the inspection of floodways or project works;
- (5) Interfere with the maintenance of floodways or project works;

(6) Interfere with the ability to engage in floodfighting, patrolling, or other flood emergency activities;

(7) Increase the damaging effects of flood flows; or

(8) Be injurious to, or interfere with, the successful execution, functioning, or operation of any adopted plan of flood control.

(9) Adversely affect the State Plan of Flood Control, as defined in the Water Code.

(b) When the board is the lead agency under CEQA, and the proposed encroachment could result in potential and unmitigated significant environmental effects, including cumulative environmental effects.

(c) When the board is a responsible agency under CEQA, and the CEQA document is inadequate.

(d) If the applicant fails to supply information deemed necessary by the board for application purposes, including the names of all adjacent landowners.

(e) If the proposed work does not meet board standards contained in article 8.

(f) If there has been a failure by the applicant (or persons associated with the applicant through an agreement or agency relationship) to substantially comply with permit conditions on prior related permits or if there has been work performed without a permit and that work is not the subject of the pending permit application where the applicant has not supplied reasonable and convincing assurances that compliance with the board's regulations will be achieved.

(g) If the United States Army Corps of Engineers has recommended denial of the project or has not provided the letter of determination as required under 33 C.F.R. Section 208.10(a) for permit applications involving the flood control works in the Sacramento River Flood Control Project and the San Joaquin River Flood Control Project where the State has provided assurance to the federal government.

Note: Authority cited: Section 8571, Water Code. Reference: Section 65943, Government Code; Sections 21002 and 21081, Public Resources Code; Sections 8608, 8610.5, 8710 and 8723, Water Code.

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**DIVISION 1, CHAPTER 1, ARTICLE 2, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING RIGHT OF REVIEW OF DELEGATED AUTHORITY**

AB5 DRAFT REGULATIONS

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 7, Section 109, to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters
Division 1. Reclamation Board-Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 7. Review Rights**

§ 109. Right of Review of Delegated Authority.

Any person or public agency having an interest in a decision made by the Director of the department or the ~~General Manager~~Executive Officer of the board pursuant to any delegation by the board, including those delegations in Section 5, ~~Resolution No. 94-15 dated September 16, 1994~~ and any other delegation of authority has the right to review by the board in accordance with the requirements of section 12. Adversely affected persons have the right to present arguments to the board in person or by a designated representative at a regularly scheduled board meeting.

~~<General Materials (GM) References, Annotations, or Tables>~~

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8609 and 8710, Water Code.

**STATE OF CALIFORNIA
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SACRAMENTO, CA 95821**

**DIVISION 1, CHAPTER 1, ARTICLE 9, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING PERMIT APPLICATIONS**

DRAFT REGULATIONS

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 9, Section 112, Table 8.1 to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters
Division 1. ~~Reclamation Board~~ Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 8. Standards**

§ 112. Streams Regulated and Nonpermissible Work Periods

- (a) The board requires applications to be filed for all proposed encroachments within the floodways under its jurisdiction (identified in Table 8.1) and on levees adjacent thereto, on any stream which may affect those floodways.
- (b) Banks, levees, and channels of floodways along any stream, its tributaries, or distributaries may not be excavated, cut, filled, obstructed, or left to remain excavated during the flood season.
 - (1) The flood seasons for the various floodways are shown in Table 8.1.
 - (2) The board, at the prior written request of the applicant, may allow work to be done during flood season within the floodway, provided that, in the judgment of the board, forecasts for weather and river conditions are favorable.
- (c) The following definitions apply to this section:
 - (1) Bank. "Bank" means the ground bordering a river, stream, lake, or sea, or forming the edge of a cut or hollow.

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8608, 8609 and 8710, Water Code.

Table 8.1 – Regulated Streams and Nonpermissible Work Periods

[1] Flood season November 1 through July 15

[2] Flood season November 1 through April 15

<i>Stream Title</i>	<i>County-Limits</i>	<i>Flood Season</i>
Alta Main Canal	Fresno	1
American River	Sacramento – to Nimbus Dam	2
Antelope Creek	Placer – to settlement ponds	2
Antelope Creek	Tehama	2
Angel Slough	Butte	2
Arcade Creek	Sacramento – to Roseville Road	2
Ash Creek	Modoc	2
Ash Slough	Madera	2
Atherton Cove	San Joaquin – northeast bank only	2
Auburn Ravine	Sutter and Placer	2
<u>Banta Carbona Intake Canal</u>	<u>San Joaquin</u>	<u>2</u>
Beacon Creek	Sacrament-Morrison Creek to Franklin Boulevard	2
Battle Creek	Tehama	2
Bear Creek	Merced	2
Bear Creek	<u>San Joaquin-San Joaquin, up to Jack Tone Road</u>	2
Bear Creek	<u>Shasta-Shasta, reach within designated floodway of the Sacramento River</u>	2
Bear River	Sutter, Placer & Yuba	2
Berenda Slough	Madera – Avenue 21-1/2 to Ash Slough	2
Best Slough	Yuba	2
Big Chico Creek	Butte	2
Black Rascal Creek	Merced	2
Butte Basin	Butte, Glenn, and Colusa	2
Butte Creek	Butte and Glenn – to Skyway Bridge	2
Butte Creek Diversion Canal	Sutter	2
Butte Slough	Sutter	2
Byrd Slough	Fresno	1
Cache Creek	<u>Yolo – to ½ mile west of I-5</u> <u>Yolo, Yolo Bypass to ½ mile west of I-5</u>	2
Cache Slough	Solano	2
Calaveras River	San Joaquin – to New Hogan	2

	Dam	
Cameron Slough	Fresno Fresno, within the <u>Kings River designated floodway</u>	1
Canal Creek	Merced	2
Cherokee Creek	Butte	2
Chowchilla Canal Bypass	Merced, Madera, and Mariposa	1
Chowchilla River	Merced and Madera to Buchanan Dam Merced, Madera, and Mariposa, to <u>Buchanan Dam</u>	2
Churn Creek	Shasta – within Sacramento River floodway	2
Cirby Creek	Placer	2
Clarks Fork	Kings	1
Clear Creek	Shasta – Sacramento River to Whiskeytown Dam	2
Clover Creek	Shasta – to 1.1 miles upstream from Millville Plains Road	2
Clover Creek	Lake	2
Cole Slough	Fresno	1
Colusa Bypass	Colusa	2
Colusa Basin Drain and Canal	Glenn, Colusa, and Yolo	2
Colusa Trough	Colusa	2
Coon Creek	Placer and Sutter	2
Cosumnes River	Sacramento	2
Cottonwood Creek	Shasta and Tehama – divides counties – to Dutch Gulch Dam	2
Cottonwood Creek South Fork	Tehama	2
Cottonwood Creek	Tulare – St. Johns River to Grapevine Creek	2
Cow Creek	Shasta – to 0.6 miles upstream of Millville Plains Road	2
Crescent Bypass	Kings and Fresno – North Fork Kings River	1
Cross Creek	Kings and Tulare – Nevada Avenue to St. Johns River	1
Davis Drain	Yolo	2
Dead Horse Slough	Butte	2
Deer Creek	Sacramento	2
Deer Creek	Tehama	2

Dog Creek	Fresno	2
Dry Creek	Butte	2
Dry Creek	Fresno	2
Dry Creek	Sacramento and Placer – to Antelope Creek	2
Dry Creek	Shasta – to .02 miles upstream from Millville Plains Road Shasta, reaches within designated floodways of Clear and Cottonwood Creeks	2
Dry Creek	Stanislaus – Tuolumne River to AT&SFRR	2
Dry Creek	Sutter	2
Dry Creek	Tehama	2
Dry Creek	Tulare	2
Dry Creek	Yuba	2
Duck Creek	San Joaquin	2
Duck Creek, South Branch	San Joaquin	2
Duck Slough	Merced	2
Duck Slough	Yolo	2
Dutch John Cut Slough	Kings	1
Dye Creek	Tehama	2
East Sand Slough	Tehama – within Sacramento R. floodway	2
Eastside Byapss	Merced and Madera	1
Edendale Creek	Merced	2
<u>El Capitan Canal</u>	<u>Merced</u>	<u>2</u>
Elder Creek	Tehama – to Ralston Road Bridge	2
Elk Bayou	Tulare	1
Elk Slough	Yolo	2
Fahrens Creek	Merced	2
Feather River	Butte and Yuba	2
Feather River, North Fork	Plumas	2
Five Mile Slough	Fresno	1
Fourteenmile Slough	San Joaquin	2
French Camp Slough	San Joaquin	2
Fresno River	Madera to Hidden Dam	2
Fresno River, South Fork	Madera	2
Fresno Slough	Kings and Fresno	1
Georgiana Slough	Sacramento	2
Globe Slough	Fresno	1
Gold Run Creek	Butte	2
Haas Slough	Solano	2

Hastings Cut	Solano	2
Honcut Creek	Butte and Yuba – to ½ mile west of S.P.R.R.	2
Hughes Crteek	Kings	2
Hutchinson Creek	<u>Sutter Yuba</u>	2
Ida Island	Sacramento	2
Inside Creek	Tulare	1
James Bypass	Kings and Fresno	1
Jack Slough	Yuba	2
Kaweah River	Tulare	1
Kaweah River, North Fork	Tulare	1
Kaweah River, Middle Fork	Tulare	1
Kaweah River, South Fork	Tulare	1
Kern River, South Fork	<u>Kern and Tulare Kern, Isabella Dam to Tulare County Line</u>	1
Kern River	<u>Kern, Kings and Tulare Kern and Kings</u>	1
Kern River Bypass Channel	Kern and Kings	1
Kings River	Kings, Tulare and Fresno – to Pine Flat Reservoir	1
Kings River, North Fork	Tulare	1
Kings River, South Fork	Tulare	1
Knights Landing Ridge Cut	Yolo	2
Laird Slough	Stanislaus	1
Laguna Creek	Sacramento – Morrison Creek to Franklin Boulevard	2
Laurel Creek	Solano	2
Ledgewood Creek	Solano	2
Linda Creek	Sacramento and Placer	2
Lindo Channel	Butte	2
Lindsay Slough	Solano	2
Little Chico Creek	Butte	2
Little Chico Diversion Canal	Butte	2
Little Cow Creek	Shasta	2
Littlejohns Creek	San Joaquin	2
Lone Tree Creek	San Joaquin	2
Lower San Joaquin River Flood Control Project	Fresno, Madera, and Merced	1
Magpie Creek	Sacramento – up to Raley Boulevard	2
Main Drain Canal	Kern	1
Mariposa Bypass	Merced	1
Mariposa Creek	Merced	2
Markham Creek	Sutter	2

Mayberry Slough	Sacramento	2
McClure Creek	Tehama	2
McCoy Creek	Solano	2
Merced River	Merced	1
Middle Creek	Lake	2
Miles Creek	Merced	2
Mill Creek	Fresno	2
Mill Creek	Tehama Tehama, Sacramento River to Highway 99	2
Mill Creek	Tulare	4
Miners Ravine	Placer – to Interstate 80 Highway	2
Miner Slough	Solano	2
Mokelumne River	Sacramento, San Joaquin – to Camanche Reservoir	2
Moody Slough	Solano	1
Mormon Slough	San Joaquin	2
Morrison Creek	Sacramento to Bradshaw Road Sacramento to Franklin Boulevard	2
Mosher Slough/Creek	San Joaquin – to Eight Mile Road	2
Moulton Bypass and Weir	Colusa	2
Mud Creek	Butte	2
Mud Slough Creek	Butte	2
Murphy Slough	Butte	2
Natomas Cross Canal	Sutter	2
Natomas East Main Drainage Canal	Sutter and Sacramento	2
Oak Run Creek	Shasta – to 0.6 miles upstream from Millville Plains Road	2
Old River	San Joaquin to Paradise Cut	1
Outside Creek	Tulare	1
Owens Creek	Merced	2
Paddy Creek and South Paddy Creek	San Joaquin – to Tully Road	2
Paradise Cut	San Joaquin	1
Paynes Creek	Tehama	2
Pixley Slough	San Joaquin – Eight Mile Road to Bear Creek	2
Pleasant Grove Creek Canal	Sutter and Placer – to Union Pacific R.R.	2
Porter Slough	Tulare – Road 192 to Tule River	1

Putah Creek	Yolo, Solano – to Monticello Dam	2
Putah Creek, South Fork	Solano	2
Red Bank Creek	Tehama <u>Tehama, only the reach that confluences with the Sacramento River designated floodway</u>	2
Reeds Creek	Sutter <u>Yuba</u>	2
Sacramento Bypass	Yolo	2
Sacramento Deep Water Channel	Solano and Yolo	2
Sacramento River	Keswick Dam – to west end of Sherman Island	2
Salt Creek	Shasta	2
Sand Creek	Tulare and Fresno	2
Sandy Gulch	Butte	2
San Joaquin River	Friant Dam to West End of Sherman Island	1
Scotts Creek	Lake	2
Secret Ravine	Placer	2
Shag Slough	Solano and Yolo	2
<u>Sheep Hollow Creek</u>	<u>Butte</u>	<u>2</u>
Smith Canal	San Joaquin – north Levee only	2
Sevenmile Slough	Sacramento	2
Simmerly Slough	Yuba	2
St. Johns River	Tulare	1
Stanislaus River	San Joaquin and Stanislaus – only where levees are affected <u>San Joaquin, Stanislaus, Calaveras, Tuolumne, to Goodwin Dam</u>	1
State Main Drain	Sutter	2
Steamboat Slough	Sacramento and yolo	2
Stockton Diverting Canal	San Joaquin	2
Stony Creek	Tehama and Glenn	2
Sutter Bypass	Sutter	2
Sutter Slough	Sacramento <u>Solano, Sacramento & Yolo</u>	2
Sycamore Creek	Butte	2
Sycamore Slough	Yolo	2
Sycamore Slough	Colusa	2
Thomes Creek	Tehama – within the Sacramento River floodway	2
Threemile Slough	Sacramento	2
Tisdale Bypass	Sutter	2

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**DIVISION 1, CHAPTER 1, ARTICLE 8, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING LEVEES**

DRAFT REGULATIONS

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 8, Section 120, to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters
Division 1. Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 8. Standards**

§ 120. Levees.

(a) Levees constructed, reconstructed, raised, enlarged, or modified within a floodway shall be designed and constructed in accordance with the U.S. Army Corps of Engineers manual, "Design and Construction of Levees" (EM 1110-2-1913 dated March 31, 1978, which is incorporated by reference) and as supplemented with the following standards:

- (1) Levee construction or reconstruction shall be designed by a civil engineer.
- (2) An engineering analysis that evaluates levee embankment and foundation stability shall be submitted to the board with the permit application. The analysis must verify that the levee is adequately designed and will be constructed to remain stable under loading conditions for "Case IV - Steady seepage from full flood stage" as defined in the Department of the Army manual, "Design and Construction of Levees" (EM 1110-2-1913), pp.6-6, 6-7.
- (3) A detailed settlement analysis, using procedures such as those described in the Department of the Army manual, "Settlement Analysis" (EM 1110-1-1904, dated September 30, 1990, which is incorporated by reference), must be submitted to the board.
- (4) A copy of all geotechnical studies and tests used in the design determination of

the levee shall be provided to the board when applying for a permit.

(5) The applicant shall provide the board with a permanent easement granting the Sacramento and San Joaquin Drainage District all flood control rights upon, over, and across the property to be occupied by the proposed flood control works. The easement must include the area within the proposed floodway, the levee section, and the area at least ten (10) feet in width adjacent to the landward levee toe if the area is not presently encumbered by a board easement. The board may require an easement over a larger area and over any property when it is foreseeable that the proposed activities subject to a permit would be injurious to or interfere with the adopted plan of flood control.

(6) All drains and abandoned conduits shall be removed from the proposed construction site prior to start of construction.

(7) Prior to construction or enlargement of the embankment, all holes, depressions, and ditches in the foundation area shall be backfilled and compacted to a density equal to that of the adjacent undisturbed material.

(8) Prior to construction or enlargement of the embankment, all surface vegetation shall be removed from the area to receive fill to a depth of six (6) inches. Organic soil and roots one and one-half (1-1/2) inches in diameter or larger, shall be removed from the area to receive fill to a depth of three (3) feet.

(9) An inspection trench shall be excavated to a minimum depth of six (6) feet beneath levees being constructed or reconstructed to a height of six (6) feet or greater. If necessary to ensure a satisfactory foundation, the depth of the inspection trench may be required to exceed six (6) feet.

(A) The minimum depth of an inspection trench excavated beneath levees to be constructed or reconstructed less than six (6) feet in height must be equal to the height of the design water surface above natural ground adjacent to the levee.

(B) The inspection trench must have a minimum bottom width of twelve (12) feet, and the side slopes must be one (1) foot horizontal to four (4) feet vertical, or flatter.

(C) The centerline of the inspection trench shall be located approximately under the outer edge of the shoulder of the waterside levee crown.

(10) When subsurface explorations disclose a pervious substratum underlying a levee to be constructed or reconstructed, a cutoff trench must be excavated to an impervious stratum, where practical.

(11) Cutoff trenches shall have a minimum bottom width of twelve (12) feet and the side slopes shall be one (1) foot horizontal to four (4) feet vertical, or flatter.

(12) Impervious material, with twenty (20) percent or more of its passing the No. 200 sieve, and having a plasticity index of eight (8) or more, and having a liquid limit of less than (50), must be used for construction of new levees and the reconstruction of existing levees. Special construction details (e.g., 4:1 slopes) may be substituted where these soil properties are not readily attainable. Where the design of a new levee structure utilizes zones of various materials or soil types, the requirements of this subdivision do not apply.

(13) Fill material must be placed in four (4) to six (6) inch layers and compacted with a sheepsfoot roller, or equivalent, to a relative compaction of not less than ninety (90) percent per ASTM D1557-91, dated 1991, which is incorporated by reference and above optimum moisture content, or ninety-seven (97) percent per ASTM D698-91, dated 1991, which is incorporated by reference and at or above optimum moisture content.

(14) Fill material placed within two (2) feet of a structure must be compacted by appropriate hand operated compaction equipment.

(15) Levee fill material must be free of stones or lumps exceeding three (3) inches in greatest dimension, and must be free of vegetative matter or other unsatisfactory material.

(16) Fill material may only be placed within the area indicated on the submitted plans.

(17) Fill on levee slopes must be keyed into the existing levee section whenever there is substantial fill, as determined by the board.

(18) Each layer of fill material applied on a levee must be keyed into the levee section individually in four (4) to six (6) inch layers.

(19) Density tests by a certified soils laboratory will be required to verify compaction of levee fill and trench backfill.

(20) Ditches, power poles, standpipes, distribution boxes, and other above-ground structures located within ten (10) feet of the levee toe must be relocated a minimum distance of ten (10) feet beyond the levee toes.

(21) Pipelines located alongside and within ten (10) feet of the levee toe must be relocated a minimum distance of ten (10) feet beyond the levee toe.

(22) Construction work of any type may not be done on levees or within the floodway during the flood season (see Table 8.1) unless authorized by the General Manager.

(23) The areas adjacent to the levee must drain away from the levee toes for a

minimum distance of ten (10) feet.

(24) The finished slope of any project levee construction or reconstruction must be three (3) feet horizontal to one (1) foot vertical, or flatter, on the waterside and two (2) feet horizontal to one (1) foot vertical, or flatter, on the landside of the levee.

(25) The finished slope of any bypass levee must be four (4) feet horizontal to one (1) foot vertical, or flatter, on the waterside and three (3) feet horizontal to one (1) foot vertical, or flatter, on the landside of the levee.

(26) An existing levee section being reconstructed, realigned, or otherwise altered, and having encroachments that are located within the levee that are to be replaced or changed, must have detailed plans of the proposed encroachment changes approved by the board prior to start of construction.

(27) The board may require the modification, as necessary, of existing pipelines within a levee section that is being raised to accommodate a higher design water surface elevation in order to prevent seepage along the pipeline and to prevent backflow through the pipeline during the design event.

(28) A set of "as constructed" drawings of any levee project shall be submitted to the board, the department and the Corps of Engineers upon completion of the project.

(29) Stone revetment may be required on levee slopes where turbulence, flow, or wave action may cause erosion.

(30) Grasses or other approved ground covers may be required on levee slopes.

(31) The minimum crown width of a levee is normally twelve (12) feet on minor streams and twenty (20) feet on major streams. The levee crown width for a levee on a specific stream is defined by the project document and/or operations manual in current use and must be consistent with minimum width requirements of existing levees on the specific stream.

(32) A levee having a crown width of fifteen (15) feet or less must have vehicular turnouts at approximately two thousand-five hundred (2,500) foot intervals if there is no existing access ramp within that distance.

(33) As used in this section, the term "approved risk-based analysis" means an analysis which uses simulation modeling of river discharge versus probability of occurrence, river stage versus river discharge estimates, and river stage versus flood damage estimates and accounts for uncertainty in these functions to determine the performance of a proposed flood control feature.

(A) All levees constructed or reconstructed must have a minimum of three (3) feet of freeboard above the design flood plane, or a crown elevation no lower than

designed using an approved risk-based analysis.

(B) Unless designed using an approved risk-based analysis, the design freeboard of a levee to be constructed or reconstructed must be appropriately increased when any of the following conditions exist:

(i) High velocity streamflow.

(ii) Excessive wave action.

(iii) Excessive hydrologic, hydraulic, or geotechnical uncertainty in the levee design parameters.

(C) Unless designed using an approved risk-based analysis, levees within one hundred (100) feet of a bridge, or other structure which may constrict floodflows, must have one (1) foot of additional freeboard.

(b) Unreinforced pavement is not permitted on levee slopes.

(c) Pavement for roadways and similar uses is permitted within ten (10) feet of the levee toe.

(d) Pavement within ten (10) feet of the landside levee toe must have appropriate features that intercept seepage and prevent particle migration.

(e) Levee seepage control facilities (e.g., toe drains and toe ditches) must meet the following requirements:

(1) The seepage control facilities must be designed by a civil engineer.

(2) All studies and calculations relating to design and maintenance of the seepage control facility must be submitted to the board with the permit application.

(3) The appropriate rights-of-way for the seepage control facilities must be included in the levee easements.

(f) See Figure 8.01 for illustrated details, dimensions, and terminology for levees and floodways.

(g) If a proposed project which includes levee improvements would result in substantial residential development within an area that without the levee improvements would be subject to the Federal Emergency Management Agency

regulatory 100-year flood plain constraints, the board may require the permittee to mitigate for any increased average annual flood damage by increasing the level of protection provided by the levee improvement project, up to and including the Standard

Project Flood.

NOTE: Authority cited: Section 8571, Water Code. Reference: Sections 8608, 8609 and 8710, Water Code.

**STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION BOARD
3310 EL CAMINO AVENUE, RM. LL40 (JOC)
SACRAMENTO, CA 95821**

**DIVISION 1, CHAPTER 1, ARTICLE 8, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING LEVEES**

DRAFT REGULATIONS

**Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Add Article 8, Section 138, to read as follows:**

**CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

Title 23. Waters

Division 1. ~~Reclamation Board~~ Central Valley Flood Protection Board

Chapter 1. Organization, Powers and Standards

Article 8. Standards

§ 138. Identification of Limits of Flood Control Works.

(a) The board may identify the limits of the adopted plan of flood control or flood control works for purposes of establishing the area within the Board's jurisdiction that it actively regulates when:

1. The point of intersection of the levee slope and natural ground cannot readily be determined, therefore, the existing levee toe cannot otherwise be defined in accordance with Title 23 Cal Code Regs. Section 4(s).

2. Features or facilities are proposed to be added that may interfere with the integrity or proper functioning of the adopted plan of flood control.

NOTE: Authority cited: Section 8571, Water Code. Reference: Sections 8608, 8609 and 8710, Water Code.

STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION BOARD
3310 EL CAMINO AVENUE, RM. LL40 (JOC)
SACRAMENTO, CA 95821

DIVISION 1, CHAPTER 1, ARTICLE 9, OF THE CALIFORNIA CODE OF
REGULATIONS
REGARDING PERMIT APPLICATIONS

DRAFT REGULATIONS

Proposed Text of Regulations
In Title 23, California Code of Regulations, Division 1
Amend Article 9, Section 193, Appendix A to read as follows:

CALIFORNIA CODE OF REGULATIONS
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS

Title 23. Waters
Division 1. Reclamation Board Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 10. Appendices

APPENDIX A

STATE OF CALIFORNIA
THE RESOURCES AGENCY

~~THE RECLAMATION BOARD~~
THE CENTRAL VALLEY FLOOD PROTECTION BOARD
~~1416 Ninth Street, Room 455-8~~
3310 El Camino Avenue, Room LL40
Sacramento, California 9581421
Telephone: (916) 653-5726-574-0609
FAX (916) 653-5805 574-0682

GENERAL INFORMATION
REGARDING APPLICATIONS FOR ENCROACHMENT PERMITS

These instructions will provide you with information on how to prepare your application for a ~~Reclamation Board~~ Central Valley Flood Protection Board encroachment permit.

Approval by the Board is required for projects or uses which encroach into rivers, waterways, and floodways within and adjacent to federal and State authorized flood control projects and within designated floodways adopted by the Board. You must obtain

Board approval before you begin certain uses or construction work on any proposed project within these areas.

The Board exercises jurisdiction over the levee section, the waterward area between project levees, a 10-foot-wide strip of land adjacent to the landward levee toe which is at least 10 feet wide, adjacent to the landward levee toe, areas within 30 feet of the top of the banks of unleveed project channels, and within designated floodways adopted by the Board. Activities outside of these limits which could adversely affect the flood control project are also under Board jurisdiction. Maps of designated floodways are available for inspection at the Board's office in Sacramento, city and county planning or public works departments, and county recorders' offices. Questions relative to proposed projects or uses which may require Board approval should be directed to ~~The Reclamation Board~~ The Central Valley Flood Protection

Board, 1416 Ninth Street, Room 455-8 3310 El Camino Avenue, Room LL40, Sacramento, California 9581421, or telephone (916) ~~653-5726~~ 574-0609.

Four copies of the completed application and drawings, one completed copy of the Environmental Questionnaire, and any other environmental documents must be submitted. The application must be made on forms provided by the Board and must contain the following information:

1. A concise description of the proposed project or use.
2. The county, section, township, range and the base and meridian in which the proposed project or uses are located.
3. The name, address, telephone number, and FAX number (if any) of the applicant.
4. An endorsement must be obtained from the reclamation, levee, or flood control district agency responsible for levee maintenance. Special conditions may be added to the permit at the request of the district agency. If the maintaining district agency delays or declines to endorse the application, it may be submitted to the Board without endorsement with a written explanation as to why the application was not endorsed by the maintaining district agency.
5. A current list of the names and addresses of all adjacent property owners.
6. If applicable, provide the name and address of the Lead Agency responsible for preparing environmental documentation regarding the proposed project as required by the California Environmental Quality Act of 1970. The environmental questionnaire provide by the Board must be completed and submitted as part of your application.
7. Four copies of exhibits and drawings depicting the project or use.
8. At least two color photographs (polaroids or snapshots are acceptable) showing different views of the project site. Include captions which explain what the photograph is depicting.
9. The name and address of the owner of the proposed project or use if different from the person filing the application.
10. The name and address of the owner of the property on which the proposed project is located.

You should include with your application any additional information that would be helpful in evaluating your proposed project or use.

The application must be signed and dated.

Your completed application may be mailed or delivered in person to:

~~The Reclamation Board~~
The Central Valley Flood Protection Board
Attention: Floodway Protection Section
1416 Ninth Street, Room 455-8
3310 El Camino Avenue, Room LL40
Sacramento, California 95814-21

The Board has adopted standards for work which encroaches in to the area within its jurisdiction. Copies of the standards are available upon request. A typical levee cross section and terminology are presented in Exhibit 1.

Minimum Requirement and Format for Drawings

1. The following information is required to evaluate the work described in your application. Additional information may be required depending upon the nature of the project.
 - A. The title block of each sheet should identify the proposed activity and include the name of the applicant, number of the sheet, total number of sheets in the set, and date the drawing was prepared.
 - B. The names of the stream, river mile, scale, north arrow, datum reference, and other information as required.
 - C. The exact location of the proposed project in relation to identifiable landmarks.
 - D. Plan and elevation views of the proposed project or use and the proximity of the proposed project or use in relation to existing facilities, property lines, levees, streams, etc.
 - E. Drawings of levee cross sections or profiles must indicate the elevations of levee crowns, toes, low-water surface, and design flood plan. These drawings should include horizontal and vertical scales and must be referenced to a known elevation datum.
2. Please use the following format:
 - A. Prepare the drawings on 8-1/2-by-11-inch sheets (when possible) in accordance with the general format depicted in Exhibits 2, 3, and 4.
 - B. Allow a 1-inch binding margin on the top side of each sheet.
 - C. Because additional copies of the drawings may have to be reproduced photographically, color shadings cannot be used. Drawings must show shading as dot shading, cross hatching, or similar graphic symbols.

Application Processing

Upon receipt of an application, a general review is made to determine if it is adequately complete to begin processing. If the application is found to be complete, it will be assigned a number and a letter will be sent to the applicant acknowledging receipt of the application. The Board will send a notice of the pending application to the adjacent property owners. If, during the review process, the application is found to be incomplete, it will be returned or the applicant will be advised by letter of the deficiencies in the application. If these deficiencies are not corrected within a reasonable time limit, processing of the application will be terminated.

The applicant may be notified of a need for additional studies.

A copy of the application is sent to the U.S. Army Corps of Engineers for review and comment.

The Board staff performs some level of environmental review of the potential impacts of the proposed project or use.

The project or use described in the permit issued on each approved application is subject to 12 general conditions. A number of special conditions may be added to the approved permit depending on the nature of the proposed security.

~~The majority of applications filed are approved by the Board's General Manager. If the General Manager denies an application, the applicant has the right to appeal to the Board. Request for Board consideration should be in writing and should include a statement of facts as to why an appeal is being made to the Board.~~

Applications which must be considered by the Board are placed on the agenda of the next regular Board meeting. The applicant and all interested parties are notified of the meeting and may appear and present their views to the Board for its consideration. After an application has been approved by the Board, any requests for revisions to the proposed or completed project which have not been approved by the Board must be submitted in writing to the Board for approval. Revised applications are processed in the same manner as new applications.

Acceptance of a Permit

You must notify the Department of Water Resources ten days before construction begins by mailing the pre-addressed start card furnished by the Board when the permit is issued. This card will contain the current address and telephone number of the Department of Water Resources' Flood Project Inspection Section which provides inspection services on behalf of the Board. The beginning of any work described in the permit constitutes acceptance by the applicant that work will be done in compliance with the general and special conditions listed in the permit.

Inquiries about procedures or other details may be made in person or correspondence to ~~The Reclamation Board~~ The Central Valley Flood Protection Board, Attention: Floodway Protection Section, ~~1416 Ninth Street, Room 455-8,~~ 3310 El Camino Avenue, Room LL40, Sacramento, California ~~9581421~~; by FAX at (916) ~~653-5805~~ 574-0682; or by calling (916) ~~653-5726~~ 574-0609. Please include the Board's application number when inquiring about an application.

STATE OF CALIFORNIA
THE RESOURCES AGENCY

THE CENTRAL VALLEY FLOOD PROTECTION BOARD
THE RECLAMATION BOARD

SAMPLE

00000 GM *SAMPLE*

PERMIT NO.

This Permit is issued to:

Mr. John Doe
John Doe Irrigation District
1234 Any Street
Anywhere, California 00000

To install a 60-inch-diameter water pipeline within a 78-inch-diameter casing and a 24-inch-diameter water pipeline within a 78-inch-diameter casing under Any Stream. The project is located in the City of Anywhere approximately 1,400 feet upstream from The Road, Section 00, TOS, ROOE, M.D.B.&M., Any Stream, Sacramento County

NOTE: Special Conditions have been incorporated herein which may place Limitations on and/or require modification of your proposed project described above.

~~The Reclamation Board~~ Central Valley Flood Protection Board, on the _____ day of _____, 19____, approved this application and the plans attached thereto. Permission is granted to proceed with the work described in this application, which is incorporated herein by reference, subject to the following General and Special Conditions.

(SEAL)

Dated: _____

~~General Manager~~ Executive Officer

GENERAL CONDITIONS:

ONE: This permit is issued under the provisions of Sections 8700 - 8723 of the Water Code.

TWO: Only work described in the subject application is authorized hereby.

THREE: This permit does not grant a right to use or construct works on land owned by the Sacramento and San Joaquin Drainage District or on any other land.

FOUR: The approved work shall be accomplished under the direction and supervision of the State Department of Water Resources, and the permittee shall conform to all requirements of the Department and The Reclamation Board Central Valley Flood Protection Board.

FIVE: Unless the work herein contemplated shall have been commenced within one year after issuance of this permit, the Board reserves the right to change any conditions in this permit as may be consistent with current flood control standards and policies of The Reclamation Board Central Valley Flood Protection Board.

SIX: This permit shall remain in effect until revoked. In the event any conditions in this permit are not complied with, it may be revoked on 15 days' notice.

SEVEN: It is understood and agreed to by the permittee that the start of any work under this permit shall constitute an acceptance of the conditions in this permit and an agreement to perform work in accordance therewith.

(over)

EIGHT: This permit does not establish any precedent with respect to any other application received by The Reclamation Board Central Valley Flood Protection Board.

NINE: The permittee shall, when required by law, secure the written order or consent from all other public agencies having jurisdiction.

TEN: The permittee is responsible for all personal liability and property damage which may arise out of failure on the permittee's part to perform the obligations under this permit. If any claim of liability is made against the State of California, or any departments thereof, the United States of America, a local district or other maintaining agencies and the officers, agents or employees thereof, the permittee shall defend and shall hold each of them harmless from each claim.

ELEVEN: The permittee shall exercise reasonable care to operate and maintain any work authorized herein to preclude injury to or damage to any works necessary to any plan of flood control adopted by the Board or the Legislature, or interfere with the successful execution, functioning or operation of any plan of flood control adopted by the Board or the Legislature.

TWELVE: Should any of the work not conform to the conditions of this permit, the permittee, upon order of The Reclamation Board Central Valley Flood Protection Board, shall in the manner prescribed by the Board be responsible for the cost and expense to remove, alter, relocate, or reconstruct all or any part of the work herein approved.

SPECIAL CONDITIONS:

THIRTEEN: That all work shall be in accordance with the submitted drawings and specifications dated December 1991 except as modified by special permit conditions herein. No further work, other than that covered by this permit, shall be done in the area without the prior approval of ~~The Reclamation Board~~ Central Valley Flood Protection Board.

*FOURTEEN: That in the event trees and brush are cleared, they shall be completely burned or otherwise removed from the overflow area of Dry Creek, and no downed trees or brush shall be allowed to remain in the floodway during the flood season between November 1 and April 15.

*FIFTEEN: That no excavation shall be made or allowed to remain in the creek banks between November 1 and April 15.

SIXTEEN: That the backfill material for the bore pit and receiving pit excavation shall be placed in layers and compacted to a density equal to that of the adjacent undisturbed material.

SEVENTEEN: That the work area shall be restored to at least the same condition that existed prior to commencement of work.

EIGHTEEN: That the permittee shall assume all responsibility for protection, relocation, or removal of the permitted project works if required by the Board.

NINETEEN: That the applicant shall provide inspection services acceptable to the Board. A civil engineer registered in the State of California shall certify that all work was thoroughly inspected and performed in accordance with the submitted plan drawings, specifications, and permit conditions.

TWENTY: The permittee shall notify the Department of Water Resources by telephone, (916) 574-1213 ~~(916) 445-6386~~, at least ten working days prior to start of work.

*November 15 to July 20 depending on location of stream.

State of California

The Resources Agency

| ~~THE RECLAMATION BOARD~~ CENTRAL VALLEY FLOOD PROTECTION BOARD

Application No. _____

(For Office Use Only)

APPLICATION FOR A PERMIT

1. Description of proposed work: _____

2. Location: _____ County, in Section _____

(N) (E)

Township: _____ (S), Range _____ (W), M.D.B.&M.

3. _____ of _____

Name of Applicant Address

City State ZIP Code Telephone Number

FAX Number

4. Endorsement: (of Reclamation District)

We, the Trustees of _____

District Name and Number

approve this plan, subject to the following conditions:

☐ Conditions listed on back of this form ☐ Conditions Attached ☐ No Conditions

Trustee Date Trustee Date

5. Names and addresses of adjacent property owners sharing a common boundary with the land upon which the contents of this application apply. If additional space is required, list names and addresses on back of the application form or an attached sheet.

Name Address ZIP Code

6. Has an environmental determination been made of the proposed work under the California Environmental Quality Act of

1970? ☐ Yes ☐ No ☐ Pending

If yes or pending, give the name and address of the lead agency and State Clearinghouse Number:

SCH NO. _____

DWR 3615 (Rev. 4/94) Side A

7. When is the project scheduled for construction? _____

8. Please check exhibits accompanying this application.

A. ☐ Map showing the location of the proposed work.

B. ☐ Drawings showing plan and elevation views of the proposed work, scale, materials of construction, etc.

C. ☐ Drawings showing the cross section dimensions and elevations of levees, berms, stream banks, flood plain, low flow, etc.

D. ☐ Drawings showing the profile elevations of levees, berms, flood plain, low flow, etc.

E. ☐ Photograph depicting the project site.

9. Is the applicant acting for the owner of the proposed works? ☐ Yes ☐ No

If yes, the name, address and telephone number of the owner is

Signature of Applicant Date

For additional information:

ENVIRONMENTAL ASSESSMENT QUESTIONNAIRE

FOR APPLICATIONS FOR ~~RECLAMATION BOARD~~ CENTRAL VALLEY FLOOD
PROTECTION BOARD ENCROACHMENT PERMITS

This environmental assessment questionnaire must be completed for all ~~Reclamation Board~~ Central Valley Flood Protection Board applications. Please provide an explanation where requested. Incomplete answers may result in delays in processing permit applications. Failure to complete the questionnaire may result in rejection of the application.

1. Has an environmental assessment or initial study been made or is one being made by a local or State permitting agency in accordance with the California Environmental Quality Act?

Yes _____ No _____. If yes, identify the Lead Agency, type of document prepared or which will be prepared, and the State Clearinghouse number:

2. Will the project require certification, authorization or issuance of a permit by any local, State, or federal environmental control agency?

Yes _____ No _____. List all other governmental permits or approvals necessary for this project or use, including U.S. Army Corps of Engineers' 404 and Section 10 permits, State Water Quality Certification, Department of Fish and Game 1600 agreement, etc. Attach copies of all applicable permits.

3. Give the name and address of the owner of the property on which the project or use is located.

4. Will the project or use require issuance of a variance or conditional use permit by a city or county?

Yes _____ No _____. Explain:

5. Is the project or use currently operating under an existing use permit issued by a local agency?

Yes _____ No _____. Explain:

6. Describe all types of vegetation growing on the project site, including trees, brush, grass, etc.

7. Describe what type of wildlife or fish may use the project site or adjoining areas for habitat, food source, nesting sites, source of water, etc.

8. Has the Department of Fish and Game, U.S. Fish and Wildlife Service, or National Marine Fisheries Service been consulted relative to the existence of, or impacts to, threatened or endangered species on or near the project site?

Yes _____ No _____. Explain:

9. Will the project or use significantly change present uses of the project area?

Yes _____ No _____. Explain:

10. Will the project result in changes to scenic views or existing recreational opportunities?

Yes _____ No _____. Explain:

11. Will the project result in the discharge of silt or other materials into a body of water?

Yes _____ No _____. Explain:

12. Will the project involve the application, use, or disposal of hazardous materials?

Yes _____ No _____. If yes, list the types of materials, proposed use, and disposal plan. Provide copies of all applicable hazardous material handling plans.

13. Will construction activities or the completed project generate significant amounts of noise?

Yes _____ No _____. Explain:

14. Will construction activities or the completed project generate significant amounts of dust, ash, smoke, fumes, or odors?

Yes _____ No _____. Explain:

15. Will the project activities or uses involve the burning of brush, trees, or construction materials, etc.?

Yes _____ No _____. Explain, and identify safety and air pollution control measures:

16. Will the project affect existing agricultural uses or result in the loss of existing agricultural lands?

Yes _____ No _____. Explain:

17. Have any other projects similar to the proposed project been planned or completed in the same general area as the proposed project?

Yes _____ No _____. Explain and identify any other similar projects:

18. Will the project have the potential to encourage, facilitate, or allow additional or new growth or development?

Yes _____ No _____. Explain:

19. Will materials be excavated from the floodplain?

Yes _____ No _____.

THE REMAINING QUESTIONS MUST ONLY BE ANSWERED IF THE ANSWER TO QUESTION NO. 19 WAS "YES." IF THE ANSWER TO QUESTION NO. 19 WAS "NO," YOU DO NOT NEED TO COMPLETE THE REMAINING QUESTIONS.

A. What is the volume of material to be excavated?

Annually _____ Total _____

B. What types of materials will be excavated?

C. Will the project site include processing and stockpiling of material on site?

Yes _____ No _____. Explain:

D. What method and equipment will be used to excavate material?

E. What is the water source for the project?

F. How will waste materials wash water, debris, and sediment be disposed of?

G. What is the proposed end land use for the project site?

H. Has a reclamation plan been prepared for this site in accordance with the Surface Mining and Reclamation Act of 1975?

Yes _____ No _____. If yes, please attach a copy.

STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION BOARD
3310 EL CAMINO AVENUE, RM. LL40 (JOC)
SACRAMENTO, CA 95821

DIVISION 1, CHAPTER 1, OF THE CALIFORNIA CODE OF REGULATIONS
REGARDING CHANGES RELATED TO AB 5 AND TECHNICAL UPDATES

INITIAL STATEMENT OF REASONS

INTRODUCTION

Assembly Bill 5 (AB 5) took effect on January 1, 2008, and was codified in relevant part at Water Code sections 8521, 8550, 8551, 8578, and 8610.5. Among many changes, AB 5 reconstituted and renamed the Reclamation Board to the "Central Valley Flood Protection Board." The new legislation also imposes new ex parte rules and requires the Board to hold evidentiary hearings on all matters requiring the issuance of a permit. Water Code section 8610.5(a)(1) states that "The board shall adopt regulations relating to evidentiary hearings pursuant to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code."

Pursuant to the authority vested by Water Code section 8571 and 8610.5, the purpose of the proposed rulemaking is to provide the regulations required by Water Code section 8610.5 regarding evidentiary hearings in accordance with Legislative intent. In addition, pursuant to authority vested by Water Code section 8571, the regulations will implement, interpret, or make specific the new legislation. The proposed rulemaking also makes several substantive and non-substantive changes in order to make the current regulations consistent with the new legislation.

In addition to making changes related to AB 5, the purpose of the proposed rulemaking is to update the regulations to fix typographical errors and omissions, as well as to bring the regulations into conformance with current Board procedures. CVFPB's authorities relevant to the subject matter of the proposed regulations are generally stated in Water Code sections 8534, 8608, and 8710-8723. Pursuant to the authority vested by Water Code section 8571, CVFPB proposes changes to Division 1 of Title 23 of the California Code of Regulations. These proposed regulations will implement, interpret, or make specific Water Code sections 8534, 8608, and 8710-8723.

The following discussion describes the specific purpose of each section of the proposed regulations and why it is necessary:

Proposed Amendment to Section 1 (Authority): This amendment reflects the name change of the board from the "Reclamation Board" to the "Central Valley Flood Protection Board," to be consistent with AB 5.

Proposed Amendment to Section 3 (Intent): This amendment includes non-substantive changes. In subsection 4, "and" has been deleted and replaced with "the" to correct a grammatical error in the original regulations.

Proposed Amendment to Section 4 (Definitions): In subsection (a)(1), this amendment deletes the reference to Article 5, Designated Floodway in the definition of an Adopted Plan of Flood Control in a project flood channel without levees, because the reference does not assist in the understanding of an "Adopted Plan of Flood Control" and can lead to confusion. In subsection (a)(3), language is added to clarify that boundary lines and encroachment lines are interchangeable terms for the purposes of the section. In subsection (a)(4), language has been added to clarify that where levees are involved, an Adopted Plan of Flood Control" may extend more than ten (10) feet from the toe of a levee. In subsection (c) the amendment reflects name change of the board from the "Reclamation Board" to the "Central Valley Flood Protection Board," to be consistent with AB 5.

Proposed Amendment to Section 5 (Delegations): This amendment specifies the circumstances in which the Board may delegate duties to the Executive Officer (formerly titled the General Manager), the Director of the Department of Water Resources, and others. AB 5, as codified at Water Code section 8610.5, states that the Board shall hold an evidentiary hearing for all matters requiring the issuance of a permit. Because the current regulation allows the Executive Officer to approve permit applications, it is inconsistent with the new legislation. However, AB 5 does not preclude all matters from being delegated to the Executive Officer. Therefore, the language has been updated to reflect which "matters" may still be delegated. No substantive changes have been made except to delete the section relating to matters involving bicycle trails on levees. No law requires that all matters involving bicycle trails on levees be approved by the Board. Additionally, the current language in subsection (b) may erroneously be interpreted to allow the Executive Officer to approve Environmental Impact Reports. Since the Board is the decision-making body for purposes of the California Environmental Quality Act, the Board is the proper body to approve Environmental Impact Reports. Therefore, language has been added to clarify that the Executive Officer may only distribute, not approve, draft environmental impact reports. Finally, CVFPB and DWR are in the process of executing a new Memorandum of Agreement which will reflect the relationship between the two agencies in light of the new legislation. Accordingly, subsections (b) and (c) have been reorganized to clarify that the Board may make delegations to the Executive Officer, the Director of the Department, or others by resolution or written agreement.

Proposed New Section 5.1 (Ex Parte Communications): This amendment proposes to add a new Chapter (2.5) and section to implement, interpret, and make specific the new ex parte rules of AB 5, as codified in Water Code section 8578. The amendment specifies what types of communications are subject to the prohibition against ex parte communications, as well as how a Board member can comply with the reporting requirements of the new legislation in the event an ex parte communication occurs.

First, the new ex parte rules enacted by AB 5 do not specifically state when the prohibition against ex parte communications attaches. Regulations are necessary to clarify when the prohibition attaches so that Board members and the public can conduct business with a level of certainty. The amendments to Title 23 were chosen because they provide guidance to the Board members and the public regarding when a communication is considered to be an ex parte communication, while remaining sufficiently flexible to encompass future unforeseen circumstances.

Second, many of the matters subject to a vote by the Board involve the construction of levees and other flood control works, sometimes necessitating a site visit by one or more members of the Board. After the enactment of AB 5, the question has arisen whether a field trip to a site constitutes an ex parte communication. Therefore, language has been added to the amendments that specifies under what circumstances a Board member may participate in a field trip when the ex parte rules attach. The amendments were chosen because an ex parte communication is only ex parte if the opposing party has not received notice of the communication. Here, advance notice is given. In addition, the Bagley-Keene public meeting law requires ten days' public notice before a meeting of more than a quorum of the Board may take place. Therefore, the amendments also comply with the public meeting law requirement in the event a quorum of the Board members wish to attend the field trip.

Third, the new ex parte rules enacted by AB 5 state that communications cease to be ex parte communications when the Board member or the person who engaged in the communication with the Board member fully discloses the communication and requests in writing that it be placed in the Board's official record of the proceeding. However, AB 5 does not specify when or how this disclosure should take place. Therefore, language has been added specifying how the disclosure requirement of AB 5 can be met. The amendments were chosen because the Executive Officer is the logical person to maintain copies of ex parte communications for inclusion in the record of proceedings. The amendment also states that the disclosure shall occur prior to or at the same time that the Board considers the matter that was the subject of the communication. This is consistent with the statement in AB 5 that in order for the communication to cease being an ex parte communication, the communication should be made a part of the official record of proceedings.

Proposed Amendment to Section 6 (Need for a Permit): This amendment reflects the name change of the Board's manager from the "General Manager" to the "Executive Officer," to be consistent with AB 5.

Proposed Amendment to Section 7 (Endorsement by Local Maintaining Agency): This amendment deletes the word "Local" in the title of the section because a maintaining agency can be a state agency, such as the Department of Water Resources. The word "state" is added to

subsection (b) to demonstrate that a state agency may be the maintaining agency. Subsection (d), which exempts the Department of Water Resources from the requirement of endorsing a project when it is the agency responsible for maintenance of the levee, is deleted because the Board will be required to solicit an endorsement or denial of a permit application from the Department of Water Resources when it is the maintaining agency.

Proposed Amendment to Section 8 (Applications): The amendment to subsection (a) notes that while there is a standard application form for most projects, this section gives the Board the authority to accept permit applications on forms that are different from the standard board application form. It is anticipated that a joint permit application form could be used by applicants when the form contains all information required by the Board and the Board has pre-approved its use. The intent of this section is to simplify and streamline the permitting process for applicants who need permits from more than one state agency for one particular project. The amendment to subsection (b)(5) clarifies that the names and addresses of all landowners of both the landowners of the property on which the projects is located and all adjacent landowners are required.

Proposed Amendment to Section 13 (Hearings): This amendment proposes to amend the existing regulations in order to implement, interpret, and make specific the new rules related to evidentiary hearings adopted by the Legislature in AB 5, as codified in Water Code section 8610.5. Water Code section 8610.5(a)(1) states that "The board shall adopt regulations relating to evidentiary hearings pursuant to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code." Water Code section 8610.5(a)(2) states that the Board shall hold an evidentiary hearing for all matters requiring the issuance of a permit. This alters past Board procedure, which allowed the Executive Officer (formerly General Manager) to issue permits without a hearing.

Because the current regulation allows the Executive Officer to approve permits under certain circumstances, it is inconsistent with the new legislation. The amendment specifies that an evidentiary hearing shall be held for any matter that requires the issuance of a permit. The amendment also establishes procedures related to evidentiary hearings. It specifies the procedure to be used if the board appoints a hearing officer, the information that must be included in the required written notice of the hearing, and incorporates new sections 13.1 (related to the conduct and order of evidentiary hearings) and 13.2 (related to consent calendar). Language has also been added for the procedure for the Board to review the decision of appointed hearing officers. The procedures are needed in order to clarify when a decision on a permit becomes final. In addition, language has been added to clarify that the "issuance of a permit" means its initial issuance and not subsequent minor modifications or alterations to an existing permit, even if it is given a new permit number.

These amendments were chosen because they incorporate and implement the informal hearing requirements and Bill of Rights in Chapter 4.5 of the Administrative Procedure Act ("APA") (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code. The regulations from other State agencies having similar functions as the Board were also consulted in drafting these regulations, including the Coastal Commission, State Water

Resources Control Board, Integrated Waste Management Board, and San Francisco Bay Conservation and Development Commission.

Proposed New Section 13.1 (Conduct and Order of Evidentiary Hearing Proceedings):

This amendment provides clarification regarding the procedures for evidentiary hearings pursuant to Section 13, above. The procedures provide the regulations required by Water Code section 8610.5 regarding evidentiary hearings in accordance with Legislative intent. The amendment requires that the evidentiary hearing be held in open session and that public testimony follow a pre-set order. This allows all interested parties an opportunity to present and rebut evidence before the Board or appointed hearing officer votes on the application in accordance with the APA's Bill of Rights in Government Code section 11425.10. The amendment also specifies what kind of evidence can be considered, and how that evidence is to be presented. These regulations are needed to make the Board's evidentiary hearings are efficient and so that applicants and the public are on notice of what will be expected of them when they participate in an evidentiary hearing before the Board. Clear guidelines regarding the admission of evidence are also necessary to create a complete record of the Board's proceedings in the event an action is subject to legal challenge. The APA's Bill of Rights requires that the decision be based upon written conclusions. Typically, staff members of the CVFPB provide a staff report to the Board outlining their recommended findings and conclusions. However, because the Board may come to a different conclusion or conclusions than those presented by the staff report, procedures are also necessary to clarify how the Board may adopt written conclusions that are different than those presented in the staff report. The amendments also make clear when a decision on an evidentiary hearing is final for purposes of judicial review.

The procedures presented by the proposed amendments reflect procedures that comply with due process, Water Code section 8610.5, and the APA informal hearing requirements and Bill of Rights. They are also similar to the regulations of other State agencies having similar functions as the Board, including the Coastal Commission, Integrated Waste Management Board, and San Francisco Bay Conservation and Development Commission.

Proposed New Section 13.2 (Consent Calendar): The CVFPB reviews approximately two hundred permits annually. Prior to AB 5, the majority of these permits were reviewed and approved by the Executive Officer. After AB 5, all permits must be reviewed by the Board during its monthly meetings. In order to streamline the hearing requirement, regulations specifically providing for a consent calendar have been added. This amendment specifies the procedures for the consent calendar. The amendment states that an item can only be voted on as a part of the consent calendar if the Board accepts the staff report with no substantial changes. The applicant, any member of the public, or any Board member may remove the item from the consent calendar, therefore the amendment provides an opportunity to present and rebut evidence prior to the Board decision. Written conclusions supporting the decision are still required. Therefore, consent calendar items incorporate the requirements of Sections 13 and 13.1, but serve to expedite the process for permit applications that are non-controversial and that have no known opposition.

Proposed Amendment to Section 15 (Bases for Denial of Applications): AB 5, as codified at Water Code section 8610.5(c), states that in any evidentiary hearing the Board shall consider,

among other things, the “[e]ffects of the proposed decision on the entire State Plan of Flood Control.” Water Code section 8523, also a new section effective January 1, 2008, defines “State Plan of Flood Control” as “the state and federal flood control works, lands, programs, plans, policies, conditions, and mode of maintenance and operations of the Sacramento River Flood Control Project described in Section 8350, and of flood control projects in the Sacramento River and San Joaquin River watersheds authorized pursuant to Article 2 (commencing with Section 12648) of Chapter 2 of Part 6 of Division 6 for which the board or the department has provided the assurances of nonfederal cooperation to the United States, and those facilities identified in Section 8361.” The current Section 15 of Title 23 specifies the circumstances in which the Board may deny a permit. Because AB 5 requires the Board to consider the effects of the permit application on the State Plan of Flood Control, the amendment also grants the Board the authority to deny a permit if the permit could adversely affect the State Plan of Flood Control. Without the authority to deny the permit based upon potentially adverse findings under Water Code section 8610.5(c), the requirement that the Board review those potential effects is arguably meaningless.

In addition, under the authority of 33 Code of Federal Regulations section 208.10 and 33 United States Code section 408, the United States Army Corps of Engineers has asserted that it must approve federal flood control works where the State has provided assurance to the federal government. For permits in which the State has provided assurance to the federal government, conflicts can arise if the decisions of the two agencies are inconsistent, and the Army Corps letter of determination pursuant to 33 C.F.R. section 208.10(a) may provide the Board information relevant to its decision whether to approve a permit. Therefore, language has been added to clarify that the Board has the authority to deny a permit application if the Army Corps of Engineers has recommended denial of the permit or has not provided the letter of determination under 33 C.F.R. Section 208.10(a) for permit applications involving the flood control works in the Sacramento River Flood Control Project and the San Joaquin River Flood Control Project where the State has provided assurance to the federal government.

Proposed Amendment to Section 109 (Right of Review of Delegated Authority): This amendment is being updated to reflect AB 5’s change in the title of “General Manager” to “Executive Officer.” Additionally, CVFPB and DWR are in the process of executing a new Memorandum of Agreement which will reflect the relationship between the two agencies in light of the new legislation. Accordingly, this amendment deletes the reference to previous Resolution No. 94-15 dated September 16, 1994.

Proposed Amendments to Section 112, Table 8.1 (Regulated Streams and Nonpermissible Work Periods): These amendments are necessary to correct boundary description limits of regulated streams and floodways, including the name of the counties where the streams are located. The amendments also include adding streams and creeks within the adopted designated

floodways that were inadvertently left out and deleting streams and creeks that are outside the board's adopted designated floodways.

Proposed Amendments to Section 120 (Levees): These amendments are necessary to allow the board to require an easement that is necessary to regulate the flood control interest of the Central Valley Flood Protection Board. Under this change, easements may be required for maintenance, operation, flood fights, flowage, excavation or other reasons to the extent such easement are necessary to prevent the proposed activities subject to a permit from resulting in a n effect that is injurious to or interferes with the adopted plan of flood control.

Proposed New section 138 (Identification of Limits of Flood Control Works): This amendment adds to the Central Valley Flood Protection Board the ability to define the limits of the Board's regulatory interest within the Sacramento or San Joaquin Rivers' bed and banks or any of their tributaries, adjacent land, overflow basins or any land susceptible to overflow of the Sacramento or San Joaquin Rivers. The easement are will be determined in accordance with the Board's jurisdiction to approve plans of reclamation, flood control, drainage, improvement, dredging or work within the Sacramento or San Joaquin Rivers' bed or banks or any of their tributaries, adjacent land, overflow basins or any land susceptible to overflow of the Sacramento or San Joaquin Rivers. This section is necessary for the Board to execute its regulatory duties by allowing the Board to accurately delineate the area the board determines it must regulate for flood control purposes and then memorialize that determination through an easement. The amendment also allows the board to determine the limits of its regulatory interest when an applicant requests permissions from the Board to tie or join their project into a levee regulated by the board by means of the placement of fill. The proposed section would also address the situation in which the board must define the easement for purposes of installation of a pump or other flood features or facilities necessary to improve the functioning of the flood control system. This section would also address situations in which the placement of dredge or other material has obscured or buried the original intersection of the project levee with the natural ground.

Proposed Amendment to Section 193, Appendix A (Application for Encroachment Permit): This amendment proposes creating a new article labeled, "Appendices." The amendment allows the appendix, general information regarding applications for encroachment permits, to be current with the amended regulations. The Board's name is changed from the "Reclamation Board" to the "Central Valley Flood Protection Board" throughout the appendix. The address is changed to be consistent with the current board address.

Specific changes to the third paragraph includes an update to the explanation of the Board's easement requirement, which is now at least ten feet rather than limited to ten feet to be consistent with the amendment to section 120(a)(5). In the same sentence, the word "areas" is added to the explanation of the Board's jurisdiction over unleveed project channels to make the sentence clearer.

In number 4 of the fourth paragraph, "district" is changed to "agency." The purpose of this amendment is to be consistent with section 7 of the regulations, where the entity responsible for levee maintenance is referred to as the "maintaining agency."

New number 10 in the fourth paragraph is added to provide the name and address of the property owners on which the proposed project is located in order for appendix A to be consistent with the amendments to section 8 of the regulations.

Additionally, in the application processing section, the current regulations state that the majority of applications filed are approved by the Board's General Manager. This is no longer the accurate because AB 5 requires all permit applications to be reviewed by the Board. Accordingly, this language has been deleted.

SPECIAL CONSIDERATIONS:

A rulemaking agency must find that no alternative would be more effective in carrying out the purpose for which a regulation is proposed or would be as effective as and less burdensome to affected private persons than the adopted regulation. The CVFPB held a public meeting for interested persons prior to the drafting of this Initial Statement of Reasons. The CVFPB considered and incorporated, where appropriate, the suggestions made during that public meeting. No alternative proposed by interested persons or otherwise considered by the CVFPB has been determined to be either more effective in carrying out the purpose for which the regulations are proposed or as effective as and less burdensome to affected private persons.

A rulemaking agency must also do the following:

- 1) Determine whether the proposed regulation "may have," or "will not have" a significant, statewide adverse impact directly affecting business. The agency must solicit alternatives if it "may have";
- 2) Describe the potential cost impact of a proposed regulation on a representative private person or business, if known;
- 3) Assess whether and to what extent the proposed regulation will create or eliminate jobs or businesses;
- 4) Find that any business reporting requirement is necessary for the public health, safety, or welfare; and

5) State whether a proposed regulation affects small business.

Discussion:

The proposed regulations primarily clarify new laws imposed on the CVFPB by new legislation effective January 1, 2008 (AB 5) and fix typographic errors. Most of the amendments do not impose any new requirements upon private persons or businesses, but rather the Board and its staff. Sections 13 and 13.1 set out procedural requirements for the conduct of hearings. However, these amendments do not impose new substantive requirements upon private persons or businesses. Two of the proposed regulations (Sections 120(a)(5) and 138) are related to easements and give the Board the ability to create greater flood protection, and arguably protect businesses in those areas. These regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposal will not have any impact on the creation or elimination of jobs, the creation of new businesses, or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California. No business reporting requirement is imposed by the proposal.